(916) 323-7715

April 28, 1981

Mr. R

Dear Mr. R :

This is in response to your April 2, 1981, letter to Mr. Glenn Rigby concerning Recommendation 4, Paragraph 3 of the 1979-80 Marin County Assessment Practices Survey:

> "In other cases estimated assessments will result in the assessees subsequently filing a late property statement, revealing that the estimates were either too low or too high. When the estimated assessment is deemed to be too high, the Marin County auditor-appraisers will arbitrarily lower the assessment. According to the Assessor's Handbook Section 271, page 50, even if the property statement is later returned showing a lower value figure, the arbitrary assessment takes precedence."

Paragraph 3, like Paragraph 1 of Recommendation 4 which precedes it, presupposes that the estimated assessments were made because assessees failed to file property statements, as they were required to do. Where such has occurred, and where assessees have subsequently filed late property statements which indicated that the estimated assessments were excessive, it has been our position that a county may not grant refunds to the assessees, even if the assessor does not object thereto or even if the assessor agrees that such assessments were excessive. Accordingly, Assessors' Handbook AB 271, Assessment Roll Procedures, at page 50, and Assessment Practices Survey recommendations are to the same effect.

The basis for our position was explained in a July 16, 1980, letter to Mr. William C. Greenwood, Fresno County Assessor:

"Our position has been based in large part on

court cases which suggest that the taxpayer has no recourse when the assessor has valued the property too high and there was no appeal to the local board of equalization. Los Angeles Etc. Corp. v. Los Angeles County, (1937) 22 Cal. App. 2d 418. The cases also indicate that there is a distinction between a mere error of overvaluation and one where the overvaluation is an incident of assessing property that should not have been assessed. Parr-Richmond Industrial Corp v. Boyd, (1954) 43 Cal. 2d 157. This line of cases relies upon the rule that where there is a question of value, recourse to the local board is a prerequisite to any refund of taxes. However, where there is a question of law, such as the assessment of non-existent property, the taxpayer may proceed directly to court without applying to the local board of equalization. Star-Kist Foods, Inc. v. Quinn, (1960) 54 Cal. 2d 507, stated at page 510:

> 'Prior application to the local board has not been required, however, in certain cases where the facts are undisputed and the property assessed was tax-exempt, outside the jurisdiction, or non-existent.'

"In all of the above-cited cases, the case ended up in court because the taxpayer and the assessor were disputing the value of the property. When the question is one of overvaluation based upon appraisal judgment, the issue is essentially one of fact, not one of law. Therefore, the court refuses to hold that as a matter of law, the value is either the taxpayer's assessed value or the assessor's asserted value. The reason for the existence of the local board and the appeals procedure is to resolve these unique questions of fact. Without going to the local board, which has the special competence to decide these fact questions, there is no remedy."

We do not believe that our position in this respect is inconsistent with Revenue and Taxation Code Section 4831.5, or that that section is even applicable to instances in which estimated assessments have been made because assessees failed to file property statements. Providing, in pertinent part, that when it can be ascertained by the assessor from an audit of an assessee's records that there has been a defect of description

or clerical error of the assessee in his property statement which caused the assessor to assess taxable property at a substantially higher valuation than he would have otherwise entered on the roll, the assessor may correct the roll, Section 4831.5 proceeds from the premise that the assessee filed a property statement; that the statement was erroneous in some respect; and that, relying on the erroneous property statement, the assessor assessed the property in excess of its true value. Additionally, Section 4831.5 applies only "when it can be ascertained by the assessor from an audit of an assessee's books of account or other papers" that the property statement filed, and upon which the assessment was based, was erroneous. (Emphasis added.)

Stats. 1978, Ch. 732, in effect January 1, 1979, which added the fourth paragraph to Revenue and Taxation Code Section 469, is applicable to instances in which estimated assessments have been made because assessees failed to file property statements:

> "If the audit for any particular tax year discloses that the property of the taxpayer was incorrectly valued or misclassified for any cause, to the extent that this error caused the property to be assessed at a higher value than the assessor would have entered on the roll had such incorrect valuation or misclassification not occurred, then the assessor shall notify the taxpayer of the amount of the excess valuation or misclassification, and the fact that a claim for cancellation or refund may be filed with the county as provided by Sections 4986 and 5096."

Such a conclusion, that property was incorrectly valued, must be based upon the results of an audit of the assessee, however, not upon the mere subsequent filing of a late property statement.

Very truly yours,

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Tax Counsel

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